

United States
Circuit Court of Appeals
For the Ninth Circuit.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Appellant,

vs.

GLOBE NAVIGATION COMPANY, a Corpora-
tion, and S. P. WESTON, as Trustee in Bank-
ruptcy of the GLOBE NAVIGATION COM-
PANY, a Corporation, Bankrupt,

Appellees.

Apostles on Appeal.

Upon Appeal from the United States District Court for
the Western District of Washington, Northern Division.

Filed

AUG 10 1915

F. D. Monckton,
Clerk.

No. 2630

United States
Circuit Court of Appeals
For the Ninth Circuit.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Appellant,

vs.

GLOBE NAVIGATION COMPANY, a Corporation,
and S. P. WESTON, as Trustee in Bankruptcy
of the GLOBE NAVIGATION COMPANY,
a Corporation, Bankrupt,

Appellees.

Apostles on Appeal.

Upon Appeal from the United States District Court for
the Western District of Washington, Northern Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Answer.....	9
Assignment of Errors.....	80
Certificate of Clerk U. S. District Court to Ap- tles, etc.	85
Cost Bond on Appeal.....	74
Counsel Names and Addresses of.....	1
Decree.....	71
DEPOSITION ON BEHALF OF LIBELANT:	
PAGE, CHARLES R.	18
Cross-examination.	22
DEPOSITIONS ON BEHALF OF RESPOND- ENT:	
FOLLANSBEE, A. W. Jr.....	25
FORD, E. T.....	27
Cross-examination	38
Redirect Examination	41
Recross-examination	42
THORNDYKE, GEORGE F.	44
Cross-examination	46
Redirect Examination	48
Libel in Personam..	4
Names and Addresses of Counsel.....	1

Index.	Page
Notice of Appeal	73
Notice of Filing Cost Bond on Appeal.....	77
Opinion	65
Order Enlarging Time to July 1, 1915, to Transmit Apostles on Appeal.....	88
Order Enlarging Time to August 1, 1915, to Transmit Apostles on Appeal to Circuit Court of Appeals	89
Praeceptum for Apostles on Appeal.....	83
Reporter's Transcript	16
Statement	3
Stipulation and Order Directing Transmission of Original Exhibits, etc., to Appellate Court	78
Stipulation re Testimony of A. W. Swenson et al., etc.....	52
TESTIMONY ON BEHALF OF PLAINTIFF:	
SWENSON, CAPT. A. W.	53
Cross-examination	57
Redirect Examination	59
THORNDYKE, GEORGE F.....	61

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2512.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Libelant,

vs.

GLOBE NAVIGATION COMPANY, a Corpora-
tion,

Respondent.

S. P. WESTON (Trustee in Bankruptcy of Globe
Navigation Company, a Bankrupt),

Substituted Respondent.

Names and Addresses of Counsel.

EDWARD J. McCUTCHEN, Esq., Proctor for
Libelant,

1107 Merchants Exchange Building, San
Francisco, California.

WARREN OLNEY, Jr., Proctor for Libelant,

1107 Merchants Exchange Building, San
Francisco, California.

CHARLES W. WILLARD, Esq., Proctor for Libel-
ant,

1107 Merchants Exchange Building, San
Francisco, California.

IRA A. CAMPBELL, Esq., Proctor for Libelant,

Merchants Exchange Building, San Fran-
cisco, California.

2 *Fireman's Fund Insurance Company vs.*

RICHARD A. BALLINGER, Esq., Proctor for
Libelant,

901 Alaska Building, Seattle, Washington.

ALFRED BATTLE, Esq., Proctor for Libelant,

901 Alaska Building, Seattle, Washington.

R. A. HULBERT, Esq., Proctor for Libelant,

901 Alaska Building, Seattle, Washington.

BRUCE C. SHORT, Esq., Proctor for Libelant,

901 Alaska Building, Seattle, Washington.

H. R. CLISE, Esq., Proctor for Respondent,

405-409 New York Building, Seattle, Wash-
ington. [1*]

C. K. POE, Esq., Proctor for Respondent,

405-409 New York Building, Seattle,
Washington. [2]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2512.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Libelant,

vs.

GLOBE NAVIGATION COMPANY, a Corpora-
tion,

Respondent.

S. P. WESTON (Trustee in Bankruptcy of Globe
Navigation Company, a Bankrupt),¹

Substituted Respondent.

*Page-number appearing at foot of page of Certified Apostles on
Appeal.

Statement.

Time of commencement of suit: July 2, 1913.

Names of parties: Fireman's Fund Insurance Company, a corporation, libelant.

Globe Navigation Company, a corporation, respondent.

S. P. Weston (Trustee in Bankruptcy of the Globe Navigation Company, a bankrupt), substituted respondent.

Dates when pleadings were filed: Libel, July 2, 1913. Answer, October 1, 1914.

Issuance of process and service thereon: On July 2, 1913. Citation *in personam* was issued against The Globe Navigation Company, a corporation, and same was delivered to Marshal for service. On the 15th day of July, 1913, the Marshal returned said Citation into the Clerk's office with return indorsed thereon showing service upon the manager of above respondent. [3]

Reference to Commissioner: Cause was referred to Commissioner A. C. Bowman, by oral stipulation between proctors for libelant and respondent, said stipulation being entered into August 30, 1913. The Commissioner duly returned into the Clerk's office his transcript of the testimony so taken, together with the exhibits offered in evidence before said Commissioner.

Time of trial: This cause was submitted to the Honorable Jeremiah Neterer, Judge of the District Court, after argument, on depositions and testimony taken before A. C. Bowman, U. S. Commissioner.

4 *Fireman's Fund Insurance Company vs.*

Memorandum Decision was handed down and filed April, 8, 1915.

Date of entry of decree: Decree was made and entered and filed in said District Court April 21, 1915, and Notice of Appeal served and filed April 30, 1915. Assignment of Errors filed May 29, 1915. [4]

*In the United States District Court for the Western
District of Washington, Northern Division.*

IN ADMIRALTY—No. 2512.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Libelant,

vs.

GLOBE NAVIGATION COMPANY, a Corpora-
tion,

Respondent.

Libel in Personam.

To the Honorable Judges of the Above-Entitled
Court:

The libel of the Fireman's Fund Insurance Company, a corporation, against The Globe Navigation Company, a corporation, in a cause of contract, civil and maritime, alleges as follows:

I.

That libelant is a corporation duly organized and existing under and by virtue of the laws of the State of California, having its principal place of business in the City of San Francisco, said State.

II.

That the American schooner "Wm. Nottingham,"

was, during all times hereinafter mentioned, owned by respondent, and A. M. Svenson was, during all of said times, the master of said vessel and agent of respondent in the execution of the instrument of indebtedness and in the receipt of the advance against freight, hereinafter mentioned. [5]

III.

That heretofore, on or about the 27th day of September, 1911, for valuable consideration, W. R. Grace & Co. became the owner and holder of the following instrument of indebtedness, to wit:

£1650—o/o Stg.

Seattle, Sept. 27, 1911.

At sight after the arrival of the American schooner "Wm. Nottingham," under my command, at the port of Callao, or any other place at which her voyage may terminate, I PROMISE TO PAY to the order of W. R. Grace & Co. the sum of sixteen hundred fifty pounds (£1650—o/o) British Sterling or approved Banker's Demand Bills on London, for freight advance received at Seattle, Wash., as per receipt given, for the payment of which I hereby pledge my vessel and her freight; and I hereby assign to the legal holder of the obligation, all my lien and claim against freight, vessel and owners, with power to take in my name any and all steps necessary to enforce the same; and my consignees at port of discharge are hereby instructed to pay this obligation, and deduct the amount thereof from the freight due said vessel. In case of nonpayment, the holder shall also be entitled to the benefit of all liens in law, equity or admiralty which the master or owner of the vessel may be entitled to against any

part of the cargo or its owners for freight, or any other charges whatsoever.

This claim is to have priority of payment over all others that may be presented against the said freight and vessel.

My vessel is now lying at the port of Astoria, Oreg., loaded with cargo Oregon pine and ready to sail for Callao, Peru. [6]

Signed in triplicate, one being accomplished, the others to stand void.

A. M. SVENSON,

Master Am. Schr. "Wm. Nottingham."

IV.

That thereafter, on or about the 2d day of October, 1911, said schooner "Wm. Nottingham" sailed from the port of Westport, Oregon, for the port of Callao, Peru, with a full cargo of lumber, and, subsequently on said voyage encountered storms at sea which so damaged said vessel as to cause the same to become water-logged and dismasted, and was abandoned at sea by her master, officers and crew; that, subsequently, said schooner was picked up by the tug "Wallula" and towed to the port of Astoria, Oregon, where, together with her cargo, she was libeled for salvage by the owner of said tug and its master, officers and crew; that thereafter, subsequent to the 27th day of November, 1911, said schooner, with her cargo, was towed to the port of St. Johns, Oregon, where her cargo was discharged, and said vessel was docked in order that a survey of the damages suffered by her might be made; that following said discharge of cargo and survey of said vessel,

respondent terminated her voyage at said port of St. Johns, and there delivered said cargo into the possession of the owner thereof.

V.

That by reason of the termination of said voyage at said port of St. Johns, said sum of Sixteen Hundred Fifty Pounds Sterling (£1650—0/0) became due and payable unto said W. R. Grace & Co. [7]

VI.

That on the 14th day of February, 1912, for valuable consideration, W. R. Grace & Co. assigned unto libelant all of its right, title and interest in and to its claim for the repayment of said sum of £1650, and libelant thereby became, and is now, the owner and holder of said claim and of said lien; that demand for payment of said indebtedness of £1650 has been made by said libelant upon respondent, but payment thereof has been, and is now, refused, and the amount thereof, to wit, eight thousand and thirty-two and 20/100 (8,032.20) dollars, still remains unpaid, and is now due and owing libelant by respondent.

VII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libelant prays that a monition, according to the course of this honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said respondent, and that it may be cited to appear and answer upon oath all and singular the matters aforesaid, and that this Hon-

orable Court would be pleased to decree the payment of said sum of eight thousand and thirty-two and 20/100 (8,032.20) dollars, with interest and costs, and that libellant may have such other and further relief as in law and justice it may be entitled to receive.

BRUCE C. SHORTS,
IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Libellant. [8]

United States of America,
State of Washington,
County of King,—ss.

Frank G. Taylor, being first duly sworn, on oath deposes and says:

That he is the duly appointed General Agent of the Fireman's Fund Insurance Company, a corporation, libellant herein, and, as such, makes this verification for and on behalf of said corporation; that he has read the foregoing libel, knows the contents thereof, and believes the same to be true.

FRANK G. TAYLOR.

Subscribed and sworn to before me this 27th day of June, 1913.

[Seal] W. R. COLBY, Jr.,
Notary Public in and for the County of King, State
of Washington.

[Indorsed]: Libel *in Personam*. Filed in the U. S. District Court, Western Dist. of Washington. July 2, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [9]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 2512.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Libelant,

vs.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Respondent.

Answer.

To the Honorable Judges of the Above-entitled
Court:

The Respondent, the Globe Navigation Company,
answering the libel of the Fireman's Fund Insur-
ance Company in the above-entitled cause, says:

I.

It admits the allegations contained in paragraph
one of said libel.

II.

It admits that during all the times mentioned in
the libel, the respondent was the owner of the
schooner "Wm. Nottingham," and that during said
time A. W. Svenson was the master thereof; and
denies that at any time said Svenson was the agent
of respondent in the execution of the instrument de-
scribed in paragraph three of said libel and denies
that said Svenson ever received the advance against
freight mentioned in said libel.

III.

It admits that A. W. Svenson signed the instrument set [10] forth in paragraph three of the libel, and denies that W. R. Grace & Co. became the owner and holder of said instrument for a valuable consideration, or at all, and this respondent alleges that the sum of money mentioned and described in said instrument was due and owing from said W. R. Grace & Co. in pursuance of and under terms of a certain charter-party made and executed by said respondent and by said W. R. Grace & Co., at Seattle, Washington, on the 3d day of June, 1911, and paid by said W. R. Grace & Co. to this respondent only in accordance with the terms of said charter party and not otherwise.

IV.

This respondent admits that on or about the 2d day of October, 1911, said schooner "Wm. Nottingham" sailed from the port of Westport, Oregon, for the port of Callao, Peru, with a full cargo of lumber, and subsequently on said voyage encountered storms at sea which so damaged said vessel as to cause the same to become water-logged and dismasted, and was abandoned at sea by her master, officers and crew; that subsequently said schooner was picked up by the tug "Wallula" and towed to the port of Astoria, Oregon, where, together with her cargo, she was libeled for salvage by the owner of said tug and its master, officers, and crew; and except as may appear by the allegations hereinafter made in this paragraph, denies each and every other allegation in said paragraph contained. Respondent alleges

that said schooner with its cargo on board, immediately after its arrival at Astoria, Oregon, was abandoned by this respondent to this libelant, and that since that time this respondent has never exercised any exclusive acts of ownership over said wrecked schooner and its cargo, and that it has at all times maintained and insisted upon its said abandonment to libelant. Respondent further alleges that while said schooner with her cargo on board under the libel [11] hereinbefore referred to was in the possession of the United States Marshal of the District of Oregon with the consent of libelant, respondent and all parties in interest, said schooner with her cargo was towed under the control and direction of said Marshal to St. Johns, Oregon, where said cargo, while the same was still in the possession and control of said Marshal, was discharged on a dock at said St. Johns, and was there taken possession of by this libelant without any action by or consent whatsoever of this respondent.

V.

It denies each and every allegation contained in paragraph five of said libel.

VI.

Respondent denies that it has any knowledge as to whether on the 14th day of February, 1912, or at any other time, for a valuable consideration, or at all, that said W. R. Grace & Co. assigned unto libelant all of its right, title and interest in and to the instrument described in paragraph four of said libel, and denies that it has any knowledge as to whether the said libelant is now the owner and holder of said

claim, and therefore, asks strict proof of the same. Respondent admits that libelant has demanded of it the payment of the sum of eight thousand thirty-two dollars and twenty cents (\$8,032.20), and that it refused to pay the same, and denies that said sum or anything is due from this respondent to said libelant.

VII.

The respondent denies each and every allegation contained in paragraph seven of said libel.

VIII.

Further answering the libel herein this respondent alleges that during all the times hereinafter mentioned, Seattle [12] was the principal place of business of this respondent in the State of Washington, and that Seattle was the home port of said schooner "Wm. Nottingham"; that at Seattle, Washington, on June 3, 1911, the respondent entered into a written charter-party with W. R. Grace & Co., to transport a cargo of lumber from the Columbia River to Calloa, Peru, for a consideration therein agreed upon, and as a part of the consideration therefor it was agreed that one-third of the freight would be advanced and paid by charters on account of the freight under said charter-party subject to a charge of seven per cent to cover interest, insurance and commission; that when said schooner was fully laden and ready for sea, said W. R. Grace & Co., advanced to this respondent the sum of sixteen hundred fifty pounds British sterling, and said W. R. Grace & Co., thereupon under the terms of said charter-party insured the same and charged the

cost or premium therefor to this respondent, and respondent paid the same by allowing said W. R. Grace & Co. to deduct the same from one-third of the freight due under said charter-party, said sum of sixteen hundred fifty pounds British sterling, being said one-third of freight less said deduction of seven per cent as provided in said policy for insurance charges and interest.

IX.

Respondent further alleges said W. R. Grace & Co. in its own name, but actually as the agent for and for the use and benefit of this respondent, insured said advance of freight with the libelant herein, and paid to said libelant the premium demanded by it for said insurance, all, however, at the cost and expense and for the benefit of this respondent, but said W. R. Grace & Co., by reason of said advance of freight to this respondent and by the subsequent loss and abandonment of said schooner suffered no loss whatsoever; that said libelant at all times knew of said charter-party [13] hereinbefore referred to and its terms and conditions, and knew when it issued its policy of insurance to said W. R. Grace & Co., that the same was for the use and protection of this respondent, and was to hold this respondent harmless in case said respondent suffered any loss by reason of said voyage.

X.

Respondent alleges that there was no valuable or any consideration, whatsoever, passing between said Grace & Co. and this respondent for or on account of the instrument sued on by libelant herein, but the

consideration for the payment of the sum of money mentioned in said instrument was based wholly upon said charter-party and the performance of the conditions of said charter-party by this respondent.

XI.

Respondent further alleges that on said 27th day of September, 1911, the master of said schooner "William Nottingham" delivered to said W. R. Grace & Co., a certain bill of lading for the cargo shipped on board said schooner, wherein and whereby it was provided that said Grace & Co. should effect insurance on account of said sixteen hundred fifty pounds British sterling advanced on freight at the cost and expense of this respondent and for its protection, the delivery of said bill of lading and payment of said advance on freight and insurance thereon, all being cotemporaneous acts.

WHEREFORE, This respondent prays that this action may be dismissed and that it recover its costs therein and may have such other and further relief as in all justice it may be entitled to receive.

CLISE & POE,

Attorneys for Respondent, Globe Navigation Company. [14]

United States of America,
State of Washington,
County of King,—ss.

George F. Thorndyke, being duly sworn, on oath deposes and says: That he is the manager of the respondent, Globe Navigation Company, and as such makes this verification for and on behalf of said corporation; that he has read the foregoing answer,

knows the contents thereof, and believes the same to be true.

GEORGE F. THORNDYKE.

Subscribed and sworn to before me this 17th day of September, 1913.

H. R. CLISE,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Indorsed]: Answer. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 1, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [15]

*In the District Court of the United States, for the
Western District of Washington, Northern Division.*

FIREMAN'S FUND INSURANCE COMPANY,
Libelant,

vs.

GLOBE NAVIGATION COMPANY,
Respondent.
Wednesday, Nov. 12th.
Thursday, Nov. 13th.

Reporter's Transcript.

INDEX.

	Direct.	Cross.	Re-D.	Re-X.
Charles R. Page	3	6		
A. W. Follansbee, Jr.,...	9			
E. T. Ford	11	20	22	23
George F. Thorndyke ...	25	26	28	

CHARLES R. GAGAN,

EDWARD W. LEHNER,

Official Reporters, 329 P. O. Building. [16]

*In the District Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

FIREMAN'S FUND INSURANCE COMPANY,
Libelant,

vs.

GLOBE NAVIGATION COMPANY,
Respondent.

BE IT REMEMBERED that on Wednesday, No-
vember 12th, and Thursday, November, 13th, 1913,
pursuant to the stipulation hereunto annexed, at the
offices of Messrs. McCutchen, Olney & Willard, in
the Merchants Exchange Building, in the City and
County of San Francisco, State of California, per-
sonally appeared before me, FRANCIS KRULL, a
United States Commissioner for the Northern Dis-
trict of California, duly commissioned to take ac-

knowledgments of bail and affidavits, etc., Charles R. Page, a witness on behalf of the Libelant, and A. W. Follansbee, Jr., E. T. Ford and George F. Thorndyke, witnesses on behalf of the Respondent.

¶RA A. CAMPBELL, Esq., appeared as proctor for the Libelant, and H. R. CLISE, Esq., appeared as proctor for the Respondent, and the said witnesses having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth. [17]

(It is hereby stipulated and agreed by and between the proctors for the respective parties, that the deposition of Charles R. Page may be taken on behalf of the Libelant, and that the depositions of A. W. Follansbee, Jr., E. T. Ford and George F. Thorndyke may be taken on behalf of the Respondent, at the offices of Messrs. McCutchen, Olney & Willard, in the Merchants Exchange Building, in the City and County of San Francisco, State of California, on Wednesday, November 12th and Thursday, November 13th, 1913, before FRANCIS KRULL, United States Commissioner for the Northern District of California, and in shorthand by HERBERT BENNETT.

It is further stipulated that the depositions when written out, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said depositions, and that all objections as

to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witnesses and the signing thereof is hereby expressly waived.) [18]

[Deposition of Charles R. Page, for Libellant.]

CHARLES R. PAGE, called for the libellant, sworn.

Mr. CAMPBELL.—Q. What is your name?

A. Charles R. Page.

Q. What business are you engaged in?

A. Marine insurance.

Q. Are you connected with any insurance company? A. Fireman's Fund Insurance Company.

Q. In what capacity?

A. I am in charge of the marine loss department.

Q. Does that include the supervision of payment of losses? A. It does.

Q. Do you know whether the Fireman's Fund Insurance Company insured W. R. Grace & Company on account of advances made by W. R. Grace & Company to the master of the schooner "William Nottingham" on the voyage in which she was dismasted off Columbia River in the early part of November, 1911, or not? A. They did.

Q. I will hand you a document and ask you what it is?

A. It is the original certificate of insurance issued by the Fireman's Fund Insurance Company covering the advances in question.

Q. Will you state whether or not that is a contract of insurance? A. It is.

(Deposition of Charles R. Page.)

Q. Was any other contract of insurance issued than that one? A. Not on the risk in question.

Q. Did the Fireman's Fund Insurance Company ever pay a loss to W. R. Grace & Company under that certificate of insurance? A. They did.

Q. Do you know in what amount?

A. I cannot state positively from recollection other than it is the best of my recollection [19] that it was a total loss of \$7,920.00, the full amount of the certificate.

Q. Upon payment of that loss did you receive any document from W. R. Grace & Company?

A. Yes, sir, we demanded the surrender of the original certificate of insurance; the charter-party, if I am not mistaken, and copy of the bill of lading, the original of the master's advance note and signature to a form of subrogation which we presented to them.

Q. You say that the original certificate of insurance was surrendered. I hand you a document and ask you whether or not that is the certificate to which you refer? A. That is the one in question.

Q. Does it bear W. R. Grace & Company's endorsement?

A. Duly endorsed by W. R. Grace & Company by its submanagers Mr. Carter and Mr. Upward.

Mr. CAMPBELL.—I offer that in evidence and ask that it be marked Libellant's Exhibit "1."

(The document is marked Libellant's Exhibit "1.")

Q. I hand you another document and ask you what that is?

(Deposition of Charles R. Page.)

A. That is one of the original drafts signed by the master of the American schooner "William Nottingham" covering the advances which were insured under this policy.

Q. I hand you another document and ask you what that is?

A. That is an agreement on the part of W. R. Grace & Company which was given to us at the time of the payment of the loss undertaking to procure for us the original draft covering the advances made to the master of the "Nottingham."

Mr. CAMPBELL.—I offer that in evidence and ask that it be marked Libelant's Exhibit "2."

(The document is marked Libelant's Exhibit "2.") [20]

Q. Was that document surrendered to you by W. R. Grace & Company at the time of your payment on the loss of the certificate of insurance?

A. I cannot state positively. I have a recollection that that was subsequently obtained by us. In the interval they gave us an undertaking to get it for us.

Q. Now, I hand you the draft which you have just been testifying to and ask you whether or not that is the original draft which was subsequently surrendered to you by W. R. Grace & Company pursuant to the agreement which has just been offered in evidence and marked Libelant's Exhibit "2"?

A. Yes, sir.

Q. Does it bear W. R. Grace & Company's endorsement on the back?

(Deposition of Charles R. Page.)

A. Yes, sir, by its submanagers Mr. Carter and Mr. Upward.

Mr. CAMPBELL.—I offer that document in evidence and ask that it be marked Libelant's Exhibit #.

(The document is marked Libelant's Exhibit "3.")

Q. I hand you another document and ask you what it is and from whence it was obtained?

A. This document was obtained by us from W. R. Grace & Company, I believe, and is a duplicate receipt acknowledging the receipt of advances from W. R. Grace & Company signed by the Globe Navigation Company, Limited, G. C. Thomas.

Q. When was that obtained with respect to the time of payment of the insurance?

A. That I cannot state.

Mr. CAMPBELL.—I offer that document in evidence and ask that it be marked Libelant's Exhibit "4."

(The document is marked Libelant's Exhibit "4.")

Q. I hand you another document and ask you what it is? [21]

A. It is the company's usual form of subrogation taken upon the payment of a loss under the receipt covering the advances to W. R. Grace & Company on the 14th of February, 1912.

Q. By whom is it signed?

A. W. R. Grace & Company by Mr. Carter, the submanager.

(Deposition of Charles R. Page.)

Mr. CAMPBELL.—I offer that document in evidence and ask that it be marked Libelant's Exhibit "5."

(The document is marked Libelant's Exhibit "5.")

(It is stipulated that following the trouble which the "Nottingham" got into off Columbia River in the early part of October, 1911, a notice of abandonment of the vessel as for a constructive total loss was served by the owner of the vessel, the Globe Navigation Company, upon its underwriters covering on the vessel, after the vessel was towed into the Port of Astoria, and subsequently the voyage of the vessel on which she got into trouble was abandoned, following the discharge of her cargo at St. Johns.)

Cross-examination.

Mr. CLISE.—Q. Mr. Page, did you know anything about this insurance prior to the time that a claim was made on account of the loss?

A. Yes, sir.

Q. What did you know prior to that time?

A. I knew we made the covering advances of W. R. Grace & Company.

Q. When did you know that?

A. I could not tell positively, Mr. Clise, but probably at the time that the vessel first got into trouble. It is my custom to look up vessels which are in trouble and ascertain our interest.

Q. You did not know anything at the time the policies were written?

A. I have no recollection in regard to that.

(Deposition of Charles R. Page.)

Q. When W. R. Grace & Company surrendered to you the papers [22] which have already been introduced in evidence, did they surrender to you the charter-party on which the advances had been made?

A. They surrendered a copy of the charter-party, a certified copy.

Q. Is the paper which I hand you the charter-party which was surrendered to you by W. R. Grace & Company at that time? A. That is the one.

Mr. CLISE.—I will offer it in evidence, and ask that it be marked Respondent's Exhibit "A."

(The paper is marked, Respondent's Exhibit "A.")

Q. Referring to Libelant's Exhibit "1," this is not a policy of insurance?

A. It is known in the insurance business as a certificate of insurance.

Q. And it appears to be subject to the conditions of the usual form of English cargo policy as issued by the Fireman's Fund Insurance Company?

A. It is, yes.

Q. Have you got one of the usual forms of the English cargo policies as issued by your company?

A. Yes, sir.

Q. Is the paper which I hand you such a form?

A. Yes, sir.

Mr. CLISE.—I will offer it in evidence as Respondent's Exhibit "B."

(The paper is marked Respondent's Exhibit "B.")

24 *Fireman's Fund Insurance Company vs.*

(Deposition of Charles R. Page.)

Q. The insurance referred to in "Libelant's Exhibit "1" had been brought to the attention of your company, prior to the issuance of this certificate, had it not? A. Yes, sir.

Q. And in what manner?

A. It was offered to us by a broker on behalf of W. R. Grace & Company.

Q. Is the paper I hand you the offer that was made by your company?

A. That is not the offer. It is what is technically known as an open cover issued to that broker after [23] his offer had been made.

Q. Have you in your possession the offer as made by the broker?

A. Those offers are generally verbal.

Q. In response to the verbal offer this is the document that is issued by your company then, is it?

A. It is after the terms and rates are agreed.

Mr. CLISE.—I will offer the same in evidence as Respondent's Exhibit "C."

(The paper is marked Respondent's Exhibit "C.")

Mr. CAMPBELL.—Q. Is that issued by your company, or was that prepared by the broker and accepted by your company?

A. That particular one was evidently prepared by the broker and brought in after the deal was consummated and signed by us, and one copy taken away by him. I did not happen to notice that that was on the broker's form. The usual course of business is for us to issue the document and have a memorandum

(Deposition of Charles R. Page.)

form written out and signed and handed to the broker.

Mr. CLISE.—Q. It is immaterial whether it was issued by you or the broker; this embodied the preliminary agreement? A. It did.

Q. Then, after the amount of the advance is definitely known is another paper issued?

A. After the amount of the advance is definitely known, it is the custom of the broker to bring in what is known as a closing application to the company, asking for the issuance of a policy for the amount stated in that application.

Q. And was such an application made to you in this case? A. Yes, sir, it was.

Q. Is the paper I hand you that application?

A. That is the original application. [24]

Mr. CLISE.—I offer that in evidence as Respondent's Exhibit "D."

(The paper is marked Respondent's Exhibit "D.")

[Deposition of A. W. Follansbee, Jr., for
Respondent.]

A. W. FOLLANSBEE, Jr., called for the respondent, sworn.

Mr. CLISE.—Q. What is your name?

A. A. W. Follansbee.

Q. What is your business?

A. Marine Secretary of the Fireman's Fund Insurance Company.

Q. How long have you held that position?

A. I think since January, 1911.

(Deposition of A. W. Follansbee, Jr.)

Q. You occupied that position at the time this paper known as Libelant's Exhibit "1" was executed? A. Yes, sir.

Q. And at the time Respondent's Exhibit "C" was executed? A. Yes, sir.

Q. I understand that you were the officer of the Fireman's Fund Insurance Company that negotiated this insurance? A. Yes, sir.

Q. And you were the officer with whom Bates & Chesebrough acted in this matter? A. I was, yes.

Q. Bates, Chesebrough & Lowery?

A. Bates, Chesebrough & Lowery were acting in the capacity of brokers for W. R. Grace & Company.

Q. At the time they made the verbal application as subsequently evidenced by Respondent's Exhibits "C" and "D" did they acquaint you with the contents of a certain charter-party entered into between the Globe Navigation Company and W. R. Grace & Company as evidenced by Respondent's Exhibit "A"? A. They did not, no.

Q. Did you make any inquiries as to the contents of this [25] charter-party as shown by Respondent's Exhibit "A"? A. I did not, no.

Q. You knew that this was an advance on freight that you were insuring against, didn't you?

A. I did not know it was an advance on freight or an advance against the captain's draft. There is a little difference between the two.

Q. You did not know which it was?

A. They did not disclose that. I do not remember inquiring whether it was an advance against freight

(Deposition of A. W. Follanshee, Jr.)

or an advance against the captain's draft.

Q. When was Libelant's Exhibit "1" issued by the company?

A. Will you let me explain something first? It is customary in this business to first come in and take a covering note first, before they know what the amount is and later on when they know what it is, it is declared. I suppose this is the date of original acceptance and this is the date it was declared to us. It might have been months difference.

Q. It might not have been issued until October?

A. Here is the date, June 5th, 1911.

Q. That was simply in the event that later an advance was actually made? A. Yes, sir.

Q. If no advance is actually made then, no contract is entered into?

A. No contract entered into.

Q. After the advance was made then, they came in and told you the exact amount of the advance and you then issued this? A. Yes, sir, that is correct.

(An adjournment is here taken until to-morrow, Thursday, November 13th, 1913, at 10 o'clock A. M.)

[26]

[Deposition of E. T. Ford, for Respondent.]

Thursday, November 13th, 1913.

E. T. FORD, called for the respondent, sworn.

Mr. CLISE.—Q. Mr. Ford, please state your name and occupation.

A. Edward T. Ford; submanager W. R. Grace & Company.

Q. In June, 1911, where were you stationed?

(Deposition of E. T. Ford.)

A. I was stationed in Seattle as the agent for W. R. Grace & Company.

Q. I show you Respondent's Exhibit "A," which is the charter-party between the Globe Navigation Company and yourself and ask you if you are the E. T. Ford who executed that document on behalf of W. R. Grace & Company? A. I am.

Q. Now, that charter-party contains a clause reading: "A sufficient amount for ship's ordinary disbursements at port of loading, say not exceeding one third of the freight to be advanced by charterers if required by captain on account of freight under this Charter Party, subject to a charge of seven per cent to cover interest, insurance and commission; advance to be endorsed on Captain's copy of Charter Party and all the Bills of Lading." Did you insure this advance? A. Yes, sir, we insured it.

Q. With whom?

A. We insured through our brokers, Bates, Chesebrough & Lowery.

Q. Do you know with what company they placed it?

A. I believe they placed it with the Fireman's Fund Insurance Company.

Q. To whom did you charge the cost of this insurance?

A. We charged the cost of that insurance to the Globe Navigation Company. [27]

Q. In placing this insurance, for whom did you understand you were acting?

Mr. CAMPBELL.—We object to the question as

(Deposition of E. T. Ford.)

calling for the conclusion of the witness; the document on which the advances were made and other documents offered in evidence speak for themselves and are the best evidence.

Mr. CLISE.—I want to change the question.

Q. In placing this insurance for whom were you acting?

Mr. CAMPBELL.—We object to the question for the reason it calls for the conclusion of the witness and upon the further ground that the advances were evidenced by written documents which constitute the best evidence.

A. We were acting for the Globe Navigation Company to whom we charged and collected the amount of the premium.

Q. What do you mean by saying that you were acting for the Globe Navigation Company?

A. We chartered this vessel and agreed to pay a certain amount of freight for her; at the same time we agreed to make a certain amount of advance against the freight, which we did. The advance we insured, and, in so doing, we practically stepped into the position of the Globe Navigation Company in insuring our own freight with the understanding that if they insured the freight, they would not insure more than the balance over the amount of this advance.

Q. Now, Mr. Ford, what you did was this, was it not: You made a certain advance to the Globe Navigation Company?

A. Yes, sir, we made an advance against freight.

(Deposition of E. T. Ford.)

Q. And you insured this money advance which you made? A. Yes, sir.

Q. Wherein did the Globe Navigation Company have any insurable [28] interest in that advance?

A. We charged the insurance to them.

Q. I assume that.

A. Probably if we had not insured her they would have.

Q. Wherein did the Globe Navigation Company have any further interest in that advance so as to have an insurable interest in it?

A. Where did they have any further interest in it?

Q. Where did they have any insurable interest in that advance?

A. Of course, the usual way they would come is—the usual course is for owners to insure freight; this was practically part of the freight. This was an advance of this freight if we insured this part of it and charged them up with insurance, they, in placing their insurance, would not cover this, but would only cover the balance of the freight.

Q. I grant that. If they insured their freight they would insure the difference between the total amount of the freight and this advance?

A. Yes, sir.

Q. But the money you collected from the insurance company on the policies covering this advance was obtained by W. R. Grace & Company?

A. Yes, sir.

Q. Wherein would the Globe Navigation Company have any insurable interest in this advance which you

(Deposition of E. T. Ford.)

say that you insured for their company?

A. Let me see. I think they—after paying the premium they probably would have no further interest.

Q. All the interest they had was whatever flowed from the fact that you charged the premium to them under your charter-party terms?

A. Yes, sir, they had no further interest—they had no further connection with the interest, regardless if [29] there was a loss, we never would have looked to the Globe Navigation Company to pay it. The only place where there would be any further interest in the advance, was, if the vessel had earned her freight, then this amount of advance would have been deducted.

Q. You would have collected your draft?

A. We would have collected our draft.

Q. That is to say, that whenever under the terms of the draft the amount was repayable to you, you would have collected that from the Globe Navigation Company under the terms of the draft. Whenever the amount that was advanced under the draft became due under the terms of the draft, you would make a collection?

A. Of course, the charter provided that the freight was to be paid in a certain amount. On a settlement of the freight, the amount of the draft would have been deducted.

Q. My question is whatever the amount advanced when the draft became due by the terms of the draft, you expected to collect payment of it?

(Deposition of E. T. Ford.)

A. No, sir, we expected to deduct it from the freight.

Q. You expected to collect your draft?

A. By deducting from the freight.

Q. That was the fact, whenever that became due under the draft you expected to collect payment?

A. Yes, sir.

Q. That is really what you were doing, you were really collecting payment of that draft. You could have negotiated the draft?

A. Yes, sir, I think we could have.

Q. After making claim upon the underwriters and collecting that amount of insurance you did not pay any portion to the Globe Navigation Company?

A. None whatever. [30]

Mr. CLISE.—Q. By your answer to these last questions of Mr. Campbell, are you basing the same upon your understanding that the contract between W. R. Grace & Company and the Globe Navigation Company was based upon the charter-party and that the terms of the draft did not in any wise, alter the original agreement that was entered into between them?

Mr. CAMPBELL.—I object to the question on the ground that it calls for the conclusion of the witness, and that the documents are the best evidence.

A. The whole basis of our transaction was on the charter-party. It was with no intent whatever of changing the terms that the draft was worded as it was. There was no intention on our part of changing the terms of the charter-party at any stage of the proposition.

(Deposition of E. T. Ford.)

Mr. CLISE.—Q. In effect, your understanding is the draft was a mere receipt for advances on freight?

Mr. CAMPBELL.—I object to the question as calling for the conclusion of the witness and on the further ground the documents are the best evidence of the transaction.

Mr. CLISE.—Q. You were not claiming a bottomry bond or any loss as against the vessel, or as a claim against the Globe Navigation Company, by reason of making that advance?

Mr. CAMPBELL.—The same objection.

A. None whatever.

Mr. CAMPBELL.—Q. Did you take other drafts of this same character from the Globe Navigation Company at previous times?

A. We took a great number of them.

Mr. CLISE.—Q. Are you making that answer from an examination of your files, or just off-hand? In other words, if Mr. Thorndyke has testified you made only one other draft [31] similar to this, would you think Mr. Thorndyke was more apt to be correct than yourself?

A. The drafts which I made were with the captain as representative of the Globe Navigation Company.

Q. A close examination of the drafts made by Mr. Thorndyke at Seattle reveals only one other draft similar to this. There were a great many other drafts but the terms were not similar to this. I do not want to make a broad statement because that would compel us to go further into it.

(Deposition of E. T. Ford.)

A. You say there were a great many other drafts, but the terms were not similar to this?

Mr. CAMPBELL.—Q. You have personal knowledge of the fact of taking other drafts of the master of his vessel? A. I have, yes.

Q. You say that this is the kind of a draft that you always used?

A. That is our usual form of draft. I made our first transaction with the Globe Navigation Company and established the routine by which this business was done.

Q. Did you ever make advances without taking drafts? A. No, sir.

Mr. CLISE.—Q. Referring to this Respondent's Exhibit "A," which was the charter-party, is that the standard form of W. R. Grace & Company?

A. It is.

Q. Do you know how long this form of charter-party has been in existence?

A. To my personal knowledge it has been in existence for in excess of nine years.

Q. Is this same form of charter-party used all up and down the coast?

Mr. CAMPBELL.—That is by W. R. Grace & Company?

Mr. CLISE.—Q. Yes, by W. R. Grace & Company. [32] A. It is.

Q. It is the regular form which you use here in San Francisco? A. It is our regular form, yes.

Q. How extensive is the business of W. R. Grace & Company here in San Francisco?

(Deposition of E. T. Ford.)

A. You mean with respect to charters of this kind?

Q. With respect to charters, yes.

A. We charter approximately from 25 to 40 vessels a year on that form of charter.

Q. It appears from the evidence, that when the captain of the "Nottingham" applied to your office in Seattle for the advance against freight under the clause which I have just read, that a certain form of receipt was given to him which is known as Libellant's Exhibit "3." Will you please examine that and state whether or not that, when an advance is made under a charter similar to the one in evidence in this case, does your company make it a condition that he shall sign that particular form of draft.

Mr. CAMPBELL.—We object to the question as being incompetent, irrelevant and immaterial for the reason that advances in this particular case were under the written documents or drafts which constitute the best evidence of the contract—of the transaction.

A. We require the captain to sign this form of draft prior to making any advance.

Mr. CLISE.—Q. Does your company permit any alterations or changes in this form of draft which the captain has to sign? A. We permit no changes.

Q. In demanding this form of receipt for the moneys which are advanced under the charter-party, is it the understanding of your company thereby the terms of the charter-party are in [33] any ways varied or changed?

Mr. CAMPBELL.—I object to the question as

(Deposition of E. T. Ford.)

calling for the conclusion of the witness and upon the further ground the documents are the best evidence and speak for themselves as to the transaction.

A. We do not consider that this draft in any way changes the form, nor is it our intention that it should change the form of the charter.

Mr. CAMPBELL.—We move to strike out the answer of the witness for the reason it is a conclusion of the witness and it is not the best evidence.

Mr. CLISE.—Q. When this money is advanced to the owner does your company consider that or understand that it has any claim as against the owner for the return of this money in case of any disasters to the ship. In other words, do you consider it as loss to the owner?

Mr. CAMPBELL.—We object to the question as calling for the conclusion of the witness and upon the further ground that the drafts and documents are the best evidence and speak for themselves as to the contract.

A. We consider it merely as an advance against the freight.

Mr. CLISE.—Q. When the disaster occurred to the "Nottingham," did you ever ask for the return of this money from the Globe Navigation Company?

A. No, sir.

Q. Did your company consider that it had any claim against the Globe Navigation Company for the return of this money by reason of the disaster to the "Nottingham" under this draft, as shown by Libel-

(Deposition of E. T. Ford.)

ant's Exhibit "3"?

Mr. CAMPBELL.—We object to the question as calling for the conclusion of the witness and upon the further ground [34] that the documents speak for themselves as to the contract between the parties and constitute the best evidence.

A. We merely consider this as an advance against freight and an item to be deducted from the freight on settlement.

Mr. CLISE.—Q. Was there any consideration for the payment of the sum of money evidenced by this contract other than the terms of the charter-party?

Mr. CAMPBELL.—We object to the question on the ground that the documents speak for themselves and are the best evidence of the contract of the transaction.

A. There was no other consideration outside of the terms stated in the charter.

Mr. CLISE.—Q. Do you usually insure an advance against freight? A. We do.

Q. At whose expense is this insurance taken?

A. At the expense of the owners.

Q. Are the terms of this printed policy of yours well known among shipping men on the coast?

Mr. CAMPBELL.—We object to the question as calling for the conclusion of the witness; the witness not being qualified to testify to the knowledge of other shipping men.

A. Is that printed form of charter-party known?

Mr. CLISE.—Q. Yes, well known along this coast?

(Deposition of E. T. Ford.)

A. It is well known, yes.

Mr. CAMPBELL.—I object to the modified question and move to strike out the answer on the ground it is the conclusion of the witness, the witness not having been qualified to testify as to the knowledge of shipping men generally along the coast. [35]

Mr. CLISE.—Q. How long have you been on this coast?

A. How long have I been on this coast?

Q. Yes. A. 33 years.

Q. How long have you been with W. R. Grace & Company?

A. I have been with W. R. Grace & Company about 9 years.

Q. What business were you engaged in prior to that time?

A. I was with the Joshua Hendy Machine Works.

Cross-examination.

Mr. CAMPBELL.—Q. Are you using that form of draft now on advances? A. We are.

Q. Was it not modified after this disaster?

A. No, sir.

Q. Are you sure about that? A. Positive.

Q. You know nothing about the placing of this insurance, do you, personally? A. No, sir.

Q. You were in Seattle at that time?

A. The exact date the insurance was placed I could not say where I was.

Q. When did you come to San Francisco?

A. About the time that insurance was placed, I think I was on my return from a trip to the west

(Deposition of E. T. Ford.)

coast of South America.

Q. When did you come to San Francisco as a sub-manager?

A. I came to San Francisco as submanager in September of last year.

Q. 1912? A. 1912.

Q. Prior to that time you were the agent at Seattle?

A. Prior to that time I was the agent at Seattle and prior to that I was in the San Francisco office.

Q. The placing of the insurance on the advances was handled by the San Francisco office?

A. Handled by the San Francisco office, yes.

Q. Your knowledge simply is knowledge which has been acquired [36] from these records, I presume.

A. Acquired from these and from our routine in the office prior to the time I left San Francisco.

Q. As to the method which you do business; as the manner in which you do business.

A. The manner we do business and handle a transaction of this kind. Of course, I have handled a number of transactions of this kind prior to leaving San Francisco.

Q. That is what I am getting at. It is not personal knowledge as to the handling of this particular transaction, but it is from your knowledge of the way W. R. Grace & Company handle that character of business.

A. Yes, sir, I did not have the personal knowledge of this transaction regarding where the insurance was placed.

(Deposition of E. T. Ford.)

Q. When the "Nottingham" got into trouble, you made your claim upon the underwriters for a payment of the loss under their policies covering advances; that is, your office here did? A. Yes, sir.

Q. You personally had nothing to do with that?

A. Nothing whatever.

Q. When you say you made no demand on the Globe Navigation Company, you mean that you personally made no demand on the Globe Navigation Company?

A. No, sir, I made no demand personally on the Globe Navigation Company.

Q. Do you recall having sent a copy of this draft to Mr. Thorndyke immediately after its execution with the master? A. I did not execute the draft.

Q. You were not there at that time? A. No, sir.

Q. Before whom was it executed?

A. It was executed by Mr. Carter. [37]

Q. The draft? A. The draft, yes.

Q. Was he in Seattle at that time?

A. He was in Seattle at the time.

Q. What was his position with W. R. Grace & Company?

A. He was acting agent in my place during my absence.

Q. Was it customary to send copies of these drafts to the owners upon execution by the master?

A. We always handed the master a copy; whether he turned it into his owners, or not, I do not know.

Q. Now, in all the drafts that W. R. Grace & Company took from the Globe Navigation Company for

(Deposition of E. T. Ford.)

advances under prior charters, they were the same character as this draft, I understand?

A. The same, yes.

Mr. CAMPBELL.—That is all.

Redirect Examination.

Mr. CLISE.—Q. You do not mean that the Globe Navigation Company have executed these drafts; you mean that the captains of the various vessels have executed the drafts?

A. The captains of the various vessels have executed the drafts, yes.

Q. Now, your company never made any demand upon the Globe Navigation Company for the return of this money?

A. They made no demand on the Globe Navigation Company.

Mr. CAMPBELL.—We object to that as a conclusion. The witness said he had no personal knowledge of it.

Mr. CLISE.—Q. If any such demand had been made by your company, it would have been called to your attention?

A. Yes, sir.

Q. You have had personal knowledge of this entire transaction, have you not?

A. That is rather a difficult question [38] to answer, to say the entire transaction.

Q. Since this litigation commenced, the matter has been called to your attention?

A. It has been discussed very fully.

Q. You have advised yourself as to what action

(Deposition of E. T. Ford.)

your company has taken with regard to it?

A. I have.

Q. The testimony you have given here is understood to be not your personal action in any way, but as the representative of W. R. Grace & Company?

A. Yes, sir.

Recross-examination.

Mr. CAMPBELL.—Q. At the time this transaction took place you were on the west coast of South America?

A. I did not say I was on the west coast of South America; I said I believed I was on my return from the west coast of South America.

Q. When did you go down there?

A. I went down there in July.

Q. 1911? A. 1911, yes, sir.

Q. When did you get back?

A. I got back to Seattle on the—as close as I can remember the date it was the first of—let me see, it was during October.

Q. During October?

A. Yes, sir. If I remember correctly the accident to the “Nottingham” had occurred just prior to my arrival in San Francisco on my way home.

Q. As to what may have been done by your San Francisco office regarding the demand upon the Globe Navigation Company when you testified that there was no demand made, are you testifying to that as a conclusion on your part or because of your having been told by others in San Francisco that no demand was made?

(Deposition of E. T. Ford.)

A. Well, I returned about the time all these negotiations [39] were carried on; it was shortly after the accident, and there was considerable correspondence exchanged between my office and the San Francisco office with respect to the matter and between us, we fully discussed all the questions with respect to this and I have since discussed these various questions with Mr. Carter, who had the active management of this thing here and, of course, with respect to the placing of insurance against these advances, why I am guided by what our record shows in the office and what he has told me.

Q. It is knowledge that has come to you through somebody else?

A. Through the record and through my conversation with Mr. Carter.

Q. As to any demand having been made on the Globe Navigation Company outside of your personal knowledge when you purported to testify on behalf of the company if you had any knowledge it is what your informant told you?

A. I made no demand on the company and my conversation with others in the company who would make demands and in my conversation with those who would make demands I have been advised they made no such demand.

Mr. CAMPBELL.—I move to strike out his testimony upon what others told him as being hearsay.

Mr. CLISE.—If you are going to take that position I shall have to take Mr. Carter's testimony in Peru.

(Deposition of E. T. Ford.)

Mr. CAMPBELL.—Q. As a matter of fact, what took place was your people immediately make claim upon the underwriters to pay you under the policies for the advance, was not that it?

A. Yes, sir.

Q. The charge that you made for advancing this money to the master on the draft included interest at 7 per cent on the [40] money actually paid the master and the cost of insuring it and a commission charged for making advances?

A. The 7 per cent covered the interest, insurance and commission.

Q. You made a charge then of 7 per cent which was intended to cover interest on the actual amount of cash advanced? A. Yes, sir.

Q. And the cost of the insurance premiums to you and a commission to you for making the advance?

A. Yes, sir.

Mr. CAMPBELL.—That is all.

[Deposition of George F. Thorndyke, for Respondent.]

GEORGE F. THORNDYKE, called for the respondent, sworn.

Mr. CLISE.—Q. Mr. Thorndyke, are you an officer of the Globe Navigation Company?

A. I am manager of the Globe Navigation Company, yes.

Q. Where is the principal place of business of the Globe Navigation Company?

A. Seattle, Washington.

Q. Where was the "Nottingham" built?

(Deposition of George F. Thorndyke.)

A. Seattle, Washington.

Q. Where is its home port?

A. Seattle, Washington.

Q. You have already testified, Mr. Thorndyke, that Captain Swenson did not advise with you prior to the giving of this document known as Libelant's Exhibit "3"? Now, when was this form of draft first brought to your attention as shown by this Libelant's Exhibit "3"?

A. The first time I remember having seen that form of draft was when I was in Johnson & Higgins office in San Francisco after the disaster to the "Nottingham,"—not in Johnson & Higgins office but in W. R. [41] Grace & Company's office.

Q. Other than the one draft which you have testified was given to you on the schooner "J. W. Clise," has your company ever taken any other draft similar to this? A. Not to my knowledge.

Q. Was the draft on the schooner "J. W. Clise" executed in the same manner as this one on the "Nottingham"?

A. Yes, sir, I think it is the same, only signed by a different man, signed by a different master; signed by the master of the "Clise."

Q. You personally did not execute it?

A. I did not execute it, no. I saw it afterwards.

Q. Afterwards; when do you mean by that, prior or after the disaster to the "Nottingham"?

A. After the disaster to the "Nottingham."

Q. Has W. R. Grace & Company ever made any demand upon the Globe Navigation Company for the

(Deposition of George F. Thorndyke.)

return of the money evidenced by this Libelant's Exhibit "3"? A. No, sir.

Cross-examination.

Mr. CAMPBELL.—Q. Do you recall the time of the advances on the "Clise"? Was that prior to the advances on the "Nottingham"?

A. I think it was subsequent as I remember it. I think it was in February of the following year.

Q. October 25th, 1911. And you say that you did not have knowledge of that draft until when?

A. Until I got it from Mr. Carter, a copy of the draft from Mr. Carter in W. R. Grace & Company's office long after the "Nottingham" accident.

Q. That is the "Clise" draft?

A. No, sir, the "Nottingham" draft.

Q. When did you get a copy of the "Clise" draft?
[42]

A. When you exhibited it to me in Seattle.

Q. Was that the first time you had ever seen it?

A. Yes, sir, that was the first time.

Q. How many charters had you had with W. R. Grace & Company on your vessels prior to this one?

A. Oh, I should say 15.

Q. Did you customarily take advances under all of those charters?

A. No, we did not always take advances.

Q. You did on most of them, did you not?

A. Well, I would not say most; we took advances on a number of the charters, but I would not say the most.

Q. Advances under a master's draft?

(Deposition of George F. Thorndyke.)

A. Advances against freight?

Q. That is Grace & Company made advances under the terms of their charter-party?

A. Yes, sir, against freight.

Q. You do not know the character of drafts that the master signed in those instances?

A. No, sir, I did not know.

Q. You have no recollection of the character of draft the master signed?

A. No, sir, I did not know he signed that kind of a draft.

Q. You knew, of course, he was signing drafts?

A. I knew he was endorsing the bills of lading and I thought that endorsement on the bills of lading would call for the deduction of the advance.

Q. Didn't you know that it was customary to take drafts on advances in all cases?

A. No, sir, I do not think I did, Mr. Campbell.

Q. How do you account, then, for the fact of your producing a large number of drafts which you had taken under various charters where you had secured advances?

A. I did not produce a number of drafts. [43]

Q. Did you not produce to me a series of drafts with documents attached?

A. If I produced a number of drafts—as I remember it, we went through the files carefully and the only form of draft we found was that of the "J. W. Clise," that one.

Q. Is your recollection clear about that?

A. I think it is.

(Deposition of George F. Thorndyke.)

Q. Will you, upon your return to Seattle, examine the documents in your office and see whether or not you have not copies of other drafts given by your masters for advances under charters? A. I will.

Q. Apparently you have not concerned yourself particularly with the character of documents that the masters of vessels belonging to you have given to W. R. Grace & Company when they secured the advances.

A. Well, the only documents that I saw were those that came to my office and I looked at those.

Q. You never made it your business to customarily inquire of Grace & Company what they were taking from the master?

A. I did not inquire from Grace & Company what they were taking from the master.

Mr. CAMPBELL.—That is all.

Redirect Examination.

Mr. CLISE.—Q. Didn't the masters customarily return to you whatever papers they took or gave to Grace & Company, or copies of them?

A. They always returned a file of documents which I assumed contained all of the things, all the documents in connection with that transaction with Grace & Company's office.

Q. Either the documents, duplicates or copies, as I understand? A. Yes, sir, copies. [44]

Q. And I understand your investigation in Seattle is to the effect whether or not you have received any other drafts in connection with your charter-parties with Grace & Company?

(Deposition of George F. Thorndyke.)

Mr. CAMPBELL.—Not necessarily that. I want to know whether it is not customary for his masters to execute drafts for the secured advances under their charter-parties and if he has not knowledge of that fact from the further knowledge that he has copies of drafts which he has given not only to Grace & Company but to other companies where advances have been made. [45]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I, Francis Krull, United States Commissioner for the Northern District of California, do hereby certify that the reason stated for taking the foregoing depositions is that the testimony of the witnesses Charles R. Page, A. W. Follansbee, Jr., E. T. Ford and George F. Thorndyke, is material and necessary in the cause in the caption of the said depositions named.

I further certify that on Wednesday, November 12th, and Thursday, November 13th, 1913, I was attended by Ira A. Campbell, Esq., proctor for the Libelant, and H. R. Clise, Esq., proctor for the Respondent, and by the witnesses who were of sound mind and lawful age, and that the witnesses were by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth; that said depositions were, pursuant to the stipulation of the proctors for the respective parties hereto taken in shorthand by Herbert Bennett, and afterwards reduced to typewriting; that the reading over

and signing of said depositions of the witnesses was by the aforesaid stipulation expressly waived.

Accompanying said depositions and forming a part hereof and referred to and specified therein are Libelant's Exhibit "1," Libelant's Exhibit "2," Libelant's Exhibit "3," Libelant's Exhibit "4," and Libelants Exhibit "5"; and Respondent's Exhibit "A," Respondent's Exhibit "B," Respondent's Exhibit "C," and Respondent's Exhibit "D," such exhibits are [46] marked by me.

And I further certify that I have retained the said depositions in my possession for the purpose of mailing the same with my own hand to the Clerk of the United States District Court for the Western District of Washington, Northern Division, the Court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for any of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto subscribed my hand at my office in the City and County of San Francisco, State of California, this 20th day of December, 1913.

[Seal] FRANCIS KRULL,
U. S. Commissioner, Northern District of California,
at San Francisco.

[Endorsed]: Reporter's Transcript. Depositions of Charles R. Page, on Behalf of Libelant, and A. W. Follansbee, Jr., E. T. Ford and George F. Thorn-dyke Taken on Behalf of Respondent, Before Francis Krull, U. S. Commissioner at San Francisco,

California. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 24, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [47]

INDEX.

Plaintiff's Witnesses.	Defendant's Witnesses.
Page.	Page.

SWANSON, A. W.

Direct examination.... 3

Cross-examination 7

Redirect examination.. 9

THORNDYKE, G. F.

Direct examination....11

EXHIBITS.

"A"—Agreement 4

"B"—Statement of a/c.... 4

"C"—Bill of Lading..... 5

"D"—Receipt10

"E"—Statement13

"F"—Draft13

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. —.

FIREMEN'S FUND INSURANCE CO.,
Plaintiff,

vs.

THE GLOBE NAVIGATION COMPANY,
Defendant.

To the Honorable Judges of the Above-entitled
Court:

On this 30th day of August, 1913, the plaintiff
appeared by Mr. Ira A. Campbell, one of its counsel,
and the defendant appeared by Mr. H. R. Clise, its
counsel; thereupon the following stipulation was
entered into and proceedings had:

**[Stipulation re Testimony of A. W. Swenson et al.,
etc.]**

It is hereby stipulated by and between Ira A.
Campbell, attorney for the plaintiff, and H. R. Clise,
attorney for the defendant, that the testimony of A.
W. Swenson and other witnesses on behalf of the
parties, may be taken before A. C. Bowman, United
States Commissioner of the above-entitled Court,
with the same force and effect as though a formal
commission were issued to take such testimony or
order of reference entered. And the said testimony
may be reduced to typewriting and thereafter re-
turned into Court and used as evidence without ob-
jection as to the time, manner or form of the taking

of the same, and the signature of the witnesses is also waived.

Mr. CAMPBELL.—Will you admit that the Firemen's Fund Insurance Company is a corporation organized under the laws of the State of California?
[49]

Mr. CLISE.—I will.

Mr. CAMPBELL.—Will you admit that on the 27th day of September, 1911, A. W. Swenson was master of the schooner "William Nottingham"?

Mr. CLISE.—I will.

Mr. CAMPBELL.—And that the schooner "William Nottingham" was owned by the Globe Navigation Company?

Mr. CLISE.—I will. [50]

[Testimony of Capt. A. W. Swenson, for Plaintiff.]

Capt. A. W. SWENSON, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Q. (Mr. CAMPBELL.) I hand you a document, Captain, and ask if that is your signature?

A. That is my signature, yes, sir.

Q. Did you sign the document?

A. Apparently I did.

Q. What did you do with it after you signed it?

A. It was returned to W. R. Grace & Co. One copy, I think was left in the office of the Globe Navigation Company and I retained one copy.

Q. You retained a copy? A. I think so.

Q. Did you send a copy to W. R. Grace & Co.?

A. No, they retained one copy themselves.

Q. Where was it signed?

(Testimony of Capt. A. W. Swenson.)

A. Signed in the office of W. R. Grace & Co., in Seattle.

Q. Who was with you at the time?

A. No one except the manager of W. R. Grace & Co. in Seattle, Mr. Ford.

Q. Did you deliver a copy of it to Mr. Thorndyke?

A. W. R. Grace & Company did that.

Mr. CLISE.—I move to strike the answer as a conclusion of the witness and hearsay.

Q. Did you yourself hand a copy to Mr. Thorndyke?

A. I do not think I did. I think it was sent there by W. R. Grace.

Mr. CLISE.—I move to strike the answer as a conclusion.

Q. Did you send or hand a copy to the Globe Navigation Company or anybody representing the Globe Navigation [51] Company?

A. I do not remember whether I did.

Q. Who instructed you to go to the office of W. R. Grace & Company and sign this document?

A. The Globe Navigation Company.

Q. What officer of the Globe Navigation Company, who was acting for the Globe Navigation Company?

A. Mr. Thorndyke.

Q. Do you know what his position was with the Globe Navigation Company?

A. As manager of the Globe Navigation Company, at Seattle.

Mr. CAMPBELL.—I offer the document in evidence.

(Testimony of Capt. A. W. Swenson.)

Mr. CLISE.—I object as incompetent, irrelevant and immaterial.

Paper marked Plaintiff's Exhibit "A," filed and returned herewith.

Q. Did you receive any money from W. R. Grace & Company at the time you signed that document?

A. I received a check for a certain amount of money, yes.

Q. Did you, at that time, give them this receipt that I hand you? A. Yes, sir.

Mr. CAMPBELL.—I offer it in evidence.

Paper marked Plaintiff's Exhibit "B," filed and returned herewith.

Q. Did you advise Mr. Thorndyke that you had received this money from W. R. Grace & Company?

A. I did.

Q. Under whose instructions did you accept the money from Grace & Co.?

A. From Mr. Thorndyke of the Globe Navigation Company. [52]

Q. I hand you another document and ask you whether or not your signature is attached to it?

A. Well, I can explain that those are my initials at the bottom.

Q. You signed that, did you? A. I did.

Q. What is that document? A. Bill of lading.

Q. To whom did you hand this?

A. I signed them at W. R. Grace & Company's office and they retained the originals, and I only retained one copy. I did not hand them to anybody.

Q. You left them with W. R. Grace & Co.?

(Testimony of Capt. A. W. Swenson.)

A. Yes, sir, I signed them for them.

Q. Did you leave the bills of lading with W. R. Grace & Co.? A. Yes, sir.

Mr. CAMPBELL.—I offer this in evidence.

Paper marked Plaintiff's Exhibit "C," filed and returned herewith.

Q. From where did you sail on this voyage on which you carried the cargo for which the bills of lading were issued? A. From Westport.

Q. Where were you bound for? A. Callao.

Q. Did you afterwards, before reaching Callao, and after departing upon that voyage, get into trouble? A. I did.

Q. Briefly what happened to your vessel?

A. Well, she was waterlogged and lost part of her deckload [53] and was dismasted.

Q. Off the Columbia river?

A. Off the Columbia River.

Q. Was she afterwards picked up by the tug "Wallula" and towed back to Astoria?

A. She was.

Q. And from Astoria where was she taken?

A. Taken up to St. Johns to the Port of Portland drydock.

Q. Was her cargo discharged there?

A. The cargo was there discharged at the wharf of the Port of Portland.

Q. Was the cargo ever afterwards returned back on board of her?

A. The cargo was not returned back on board of her.

(Testimony of Capt. A. W. Swenson.)

Q. Did she ever afterwards complete the voyage to Callao? A. She did not.

Q. Did you dispose of the lumber after it was discharged from the vessel, did you personally dispose of it? A. No, sir.

Q. Did you have charge of the discharging of the cargo? A. No, I did not.

Q. Who had charge of discharging the cargo?

A. Brown & McCabe, stevedores.

Q. Who employed them to discharge her?

A. The Globe Navigation Company, I think; I am not sure on that point.

Q. Did you employ them? A. No. [54]

Cross-examination.

Q. (Mr. CLISE.) Captain, referring to this document, exhibit "A." You do not mean to say that Mr. Thorndyke or any official of the Globe Navigation Company authorized you to sign this particular paper, or any similar paper? They never saw this paper, did they?

A. I do not know. I was requested to sign it.

Q. You were requested to sign it by Mr. Ford?

A. Yes, sir.

Q. But Thorndyke did not tell you to sign this paper? A. No, he did not.

Q. He never saw this prior to your signing it?

A. No.

Q. All you were instructed to do was to go to Grace & Company and obtain from them the sum of 1650 pounds British sterling, of approved bankers' demand bills on London, that is what you were told

(Testimony of Capt. A. W. Swenson.)

to do? A. Yes, practically.

Q. When you went to Grace & Company, Ford said he would give you that amount of money provided you signed this paper?

A. That is what he said.

Q. Would he have given it to you if you had not signed this paper? A. He would not.

Mr. CAMPBELL.—I object as calling for a conclusion of the witness.

Q. Did Ford state it as a condition to his giving you the money that you had to sign this paper?

A. I objected to signing it.

Q. What did he say to you when you objected?
[55]

A. He said he could not advance the money without I signed that; that they must have that paper in order to show, or in order to be able to collect the money at the port of destination.

Q. And did he or did he not make it a condition that you should sign this paper before he would give you the money? A. Yes, sir.

Q. Now, as a matter of fact, you do not know who employed the stevedores to discharge the lumber at St. Johns, do you?

A. Well, I don't know who employed them. I understood Brown & McCabe got a contract in some way.

Q. And so you do not mean to testify then as a fact, of your own knowledge, that Brown & McCabe were employed by the Globe Navigation Company?

A. No, that I could not say.

(Testimony of Capt. A. W. Swenson.)

Q. As a matter of fact, the schooner "Nottingham" at that time, was in the hands of the United States Marshal.

A. She was in the possession of the United States Marshal.

Q. Was there a deputy United States Marshal aboard? A. There was.

Q. So that it might be equally true that Brown & McCable were employed by the United States Marshal at Portland, to discharge her, might it not?

A. Well, it might be, I could not say.

Q. So, as a matter of fact, you do not know who actually did employ Brown & McCabe?

A. No. Not to be certain of it. [56]

Redirect Examination.

Q. (Mr. CAMPBELL.) Captain, did I understand that you delivered a copy of this document marked exhibit "A" to the Globe Navigation Company after you had signed it at Mr. Ford's office?

A. I think I said I did not know whether I had delivered it or whether W. R. Grace delivered it after I signed that. I signed the several copies and it was understood that they would send copies to the Globe Navigation Company. I never handed any to the Globe Navigation Company.

Q. Now, you have secured advances on other voyages, haven't you? A. I have.

Q. You have signed documents for them, haven't you? A. I have.

Q. While you were in the employ of the Globe Navigation Company?

(Testimony of Capt. A. W. Swenson.)

A. While I was in the employ of the Globe Navigation Company.

Q. As master of the schooner "William Nottingham"? A. Yes, sir.

Mr. CAMPBELL.—I will ask that the Globe Navigation Company produce all the documents it has in its possession on which advances against freight were secured from charterers or shippers of cargo, on board vessels operated by the Globe Navigation Company.

Mr. CAMPBELL.—Will you admit what I hand you is a receipt given by the Globe Navigation Company to W. R. Grace & Co. for moneys advanced to Captain Swenson under this document marked exhibit "A"?

Mr. CLISE.—Yes, we will. [57]

Mr. CAMPBELL.—I offer this in evidence.

Paper marked Plaintiff's Exhibit "D," filed and returned herewith.

Q. (Mr. CLISE.) This Plaintiff's Exhibit "A" is dated September 27th, 1911, at Seattle, Washington. Where was your vessel at this time?

A. At Astoria.

Q. When did you leave Seattle?

A. On the 1st of October, I think. I was in Astoria to take the vessel to sea on the 2d. I was here on the 28th and 29th, I think.

(Testimony of witness closed.)

Hearing adjourned. [58]

Seattle, Washington, September 3, 1913.

Present: Mr. CAMPBELL, for the Plaintiff.

Mr. CLISE, for the Defendant.

[Testimony of George F. Thorndyke, for Plaintiff.]

GEORGE F. THORNDYKE, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Q. (Mr. CAMPBELL.) Mr. Thorndyke, I hand you a paper dated Seattle, Washington, October 25, 1911, which is signed G. G. H., master American schooner "J. W. Clise."

A. G. G. Haley, master of the "Clise."

Q. Was that document given to you by W. R. Grace & Co. upon payment to the Globe Navigation Company of the amount of money specified in the document?

A. No, the only document we got from W. R. Grace & Co. was a check for the amount advanced.

Q. Was that document given by the master of the "J. W. Clise" to W. R. Grace & Co.?

A. That is a copy of the draft, yes.

Q. At the time Grace & Company advanced the sum stated in the document? A. Yes, I think so.

Q. The amount of money stated in the document was received by the Globe Navigation Company from Grace & Co.?

A. The amount is in the statement there. You will find in the statement that it was received in devious ways in settlement of accounts for it.

Q. Is this the statement?

A. Yes, that is the statement, interest, insurance,

(Testimony of George F. Thorndyke.)

commissions and advancements and so forth. [59]

Q. The sum total is equivalent to 1300 pounds British sterling? A. Yes, sir. There is cash \$5041.79.

Q. So that it was in consideration of the items stated in the account totaling \$6,240 or reduced to English money 1300 pounds British sterling, it was in consideration of that sum that the master of the "Clise" executed this draft or document and gave it to W. R. Grace & Co.?

A. I suppose so. The captains never consult me about these drafts. Grace & Company never consult us about it. We do not know at any time what form they sign.

Q. This form was returned to you by the master?

A. As attached to that paper.

Q. Came into your possession, the possession of the Globe Navigation Company?

A. I assume it did, yes.

Q. You never asked W. R. Grace & Co. to rescind the execution of this draft, did you?

A. Yes, I asked Mr. ——— to return that particular draft.

Q. Yes.

A. No, not that particular draft.

Q. And you never tendered back to him the advances which were stated in the account and asked for a return to you of the draft? A. No.

Q. Nor did you do it in the case of the "Nottingham"?

A. No. But I spoke to him about that in the case of the "Nottingham," and he told me he would very

(Testimony of George F. Thorndyke.)

gladly give me a letter in connection with the draft.

Q. You spoke to him after the "Nottingham" had returned to [60] Astoria?

A. Yes, the first time I personally knew such a draft was being given, that form of draft was being given.

Q. Did you ever ask for the return of the draft of the "Clise"? A. No.

Q. You never asked for the return of the draft of the "Nottingham"?

A. Never asked for the return of the draft on any of them.

Mr. CAMPBELL.—I offer in evidence the draft and the account to which the witness has been referring.

Mr. CLISE.—I object as incompetent, irrelevant and immaterial.

Papers marked Plaintiff's "Exhibit "E" and "F," filed and returned herewith.

(No cross-examination.)

(Witness excused.)

Hearing adjourned. [61]

United States of America,
Western District of Washington,
Northern Division,—ss.

I, A. C. Bowman, a Commissioner of the United States District Court for the Western District of Washington, residing at Seattle, in said district, do hereby certify that the foregoing transcript, from page 1 to page 13, both inclusive, contains all of the

testimony offered before me by the parties in said cause.

The witnesses, before examination, were by me duly sworn to testify the truth, the whole truth and nothing but the truth.

I reduced the testimony to writing in shorthand and thereafter caused the same to be typewritten, and I certify that the testimony herewith returned, is the testimony given by the witnesses at said time.

Proctors for the parties stipulated that the testimony, when returned by me into Court, should have the same force and effect as if read and signed by the witnesses.

The exhibits, as shown in the record and index, are herewith returned.

I further certify that I am not of counsel nor in any way interested in the result of this suit.

Witness my hand and official seal this 2d day of November, 1914.

[Seal]

A. C. BOWMAN,

U. S. Commissioner. [62]

COMMISSIONER'S TAXABLE COSTS.

Plaintiff:

Hearing for plaintiff Aug. 30, 1913.....	\$3.00
Administering oaths to 2 witnesses.....	.20
Marking and filing 6 exhibits.....	.60
Transcript above hearing 40 folios at 10c..	4.00

\$7.80

[Indorsed]: Testimony reported by Commissioner.
Filed in the U. S. District Court, Western Dist. of

Washington, Northern Division. Nov. 2, 1914.
Frank L. Crosby, Clerk. By E. M. L., Deputy. [63]

[**Opinion.**]

*United States District Court, Western District of
Washington, Northern Division.*

No. 2512.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Libellant,

vs.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Respondent.

Filed April 8, 1915.

BRUCE C. SHORTS, IRA A. CAMPBELL,
McCUTHEN, OLNEY & WILLARD, for
Libellant.

CLISE & POE, for Respondent.

NETERER, District Judge:

June 3, 1911, The Globe Navigation Company, a corporation, owner of the schooner "Wm. Nottingham," chartered the vessel to W. R. Grace & Co. for a voyage from a mill on the Columbia River to Callao, Peru. The charter-party contains the following, among other things:

"A sufficient amount for ship's ordinary disbursements at port of loading, say not exceeding one-third of the freight to be advanced by charterers if required by Captain on account of

freight under this charter-party, subject to a charge of seven per cent to cover interest, insurance and commission, advance to be endorsed on Captain's copy of charter-party, and all the bills of lading. A commission of six per cent on estimated amount of this charter is due and payable to charterers on completion of loading. Exchange at 4.86 per pound sterling."

Sept. 27, 1911, pursuant to such stipulation, W. R. Grace & Co. advanced to the master of the vessel £1650 British sterling, and the Master was required to and did execute a draft, as follows:

"£1650—% Stg. Seattle, Sept. 27, 1911.

At sign after the arrival of the American schooner 'Wm. Nottingham,' under my command, at the port of Callao, or any other place at which her voyage may terminate, I PROMISE TO PAY to the order of W. R. Grace & Co. the sum of Sixteen Hundred Pounds (£1650—%) British Sterling or approved Bankers' Demand Bills on London, for freight advance received at Seattle, Wash., as per receipt given, for the payment of which I hereby pledge my vessel and her freight; and I hereby assign to the legal holder of the obligation all my lien and claim against freight, vessel [64] and owners, with power to take in my name any and all steps necessary to enforce the same; and my consignees at port of discharge are hereby instructed to pay this obligation, and deduct the amount thereof from the freight due said vessel.

In case of nonpayment, the holder shall also be entitled to the benefit of all liens in law, equity or admiralty which the master or owner of the vessel may be entitled to against any part of the cargo or its owners for freight, or any other charges whatsoever.

This claim is to have priority of payment over all others that may be presented against the said freight and vessel.

My vessel is now lying at the port of Astoria, Oreg., loaded with cargo Oregon Pine and ready to sail for Callao, Peru.

Signed in triplicate, one being accomplished, the others to stand void.

A. M. SWENSON,

Master Am. Schr. 'Wm. Nottingham.' "

October 6, 1911, libelant issued to W. E. Grace & Co. a certificate of insurance in the sum of \$7920.00 on advances. On the margin of the certificate of insurance is endorsed the following:

"This insurance is to cover against all the perils enumerated in the policy which may prevent the collection of said draft in whole or in part, including general average, salvage and/ or other charges arising from sea perils to which the advances hereby insured may be subjected. The ownership of draft to be deemed sufficient proof of interest."

October 2, 1911, said schooner sailed from the port of Westport, Oregon, for Callao, Peru, with a full cargo of lumber, and subsequently encountered storms at sea which so damaged the vessel as to cause

it to become water-logged and dismasted. The vessel was abandoned at sea by her master, officers and crew, and was subsequently picked up by a tug and towed to the port of Astoria, and was later towed to the port of St. Johns, Oregon, where her cargo was discharged and the vessel docked in order that a survey of the damage might be made, and the voyage was terminated at said port and the cargo delivered into the possession of the owner thereof. Claim was made to the libelant by W. R. Grace & Co. for insurance, which was paid and in consideration of the payment of the amount of insurance W. R. Grace & Co. assigned to libelant all right, title and interest in and to the "under-mentioned interests" whether on account of salvage [65] therefrom or on any other account whatever. Thereafter this libel was instituted.

Respondent, in its answer, among other things, alleges:

"Said W. R. Grace & Co., in its own name, but actually as the agent for and for the use and benefit of this respondent, insured said advance of freight with the libelant herein, and paid to said libelant the premium demanded by it for said insurance, all, however, at the cost and expense and for the benefit of this respondent, but said W. R. Grace & Co., by reason of said advance of freight to this respondent and by the subsequent loss and abandonment of said schooner, suffered no loss whatsoever; that said libelant at all times knew of said charter-party hereinbefore referred to and its terms and con-

ditions and knew when it issued its policy of insurance to said W. R. Grace & Co. that the same was for the use and protection of this respondent, and was to hold this respondent harmless in case said respondent suffered any loss by reason of said voyage.”

and further contends:

“That there was no valuable or any consideration whatsoever passing between said Grace & Co. and this respondent for or on account of the instrument sued on by libelant herein, but the consideration for the payment of the sum of money mentioned in said instrument was based wholly upon said charter-party and the performance of the conditions of said charter-party by this respondent.”

There is no testimony before the Court upon which to predicate a finding that the insurance was obtained for the respondent, nor is there testimony before the Court upon which to predicate a finding that the libelant knew of the charter-party or of its provisions. There is an utter lack of testimony upon this contention, other than a denial on the part of the libelant that it knew of the charter-party or its provisions.

The English law that the ship owner may retain advance freight notwithstanding the loss of the goods before the freight is earned, does not obtain in the United States. Freight being compensation for the transportation of goods, is due only when goods are carried to destination, and any advance of payment may be recovered back on default of delivery,

in the absence of an agreement to the contrary. *Burn-Line Lt. v. U. S. & A. S. S. Co.*, 162 Fed. 298. The stipulation in the charter-party provides for a sum "to be advanced if required by the Captain on [66] account of freight under this charter-party," and further provides, "freight payable on the right and full delivery of cargo at final port of discharge * * * ." It is conclusive, I think, from the recitals in the "charter-party" that the rights of the parties under the advance are governed by and limited to the provisions of law governing such transactions and not by any stipulation in the "charter-party." Under the law controlling in this case the insured could have maintained an action against the respondent to recover the advance made. *St. Louis, etc. Ry. v. Conner Ins. Co.*, 139 U. S. 223. This action is predicated upon contract and not primarily upon any subrogation to the rights of the assured. The authority of the master to pledge the vessel is limited to necessities. The execution of the draft in issue was not made for necessities, but to evidence a payment required to be made by provision of the charter-party and for which the owners had provided.

The home port of the vessel being Seattle, the place where the draft was issued, the libellant must be held to a knowledge of the basis of the draft. The right to recover for "advance freight" enures to the assured under the charter-party stipulations and law applicable thereto, and not upon the "draft" executed by the master. This action is grounded upon the draft and not upon "advance freight" paid upon

which the draft is predicated. The draft being issued without authority, cannot support an action for recovery, and libelant must therefore fail in this proceeding.

A decree is accordingly directed for the respondent as prayed for.

JEREMIAH NETERER,

Judge.

[Indorsed]: Opinion. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 8, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [67]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN ADMIRALTY—No. 2512.

FIREMEN'S FUND INSURANCE COMPANY,
a Corporation,

Libelant,

vs.

GLOBE NAVIGATION COMPANY, a Corpora-
tion,

Respondent.

Decree.

This cause having come on for hearing, and it having been suggested to the Court that the respondent herein, The Globe Navigation Company, has been adjudged a bankrupt during the pendency of this action; now, by consent of both parties, S. P. Weston,

72 *Fireman's Fund Insurance Company vs.*

who has been heretofore duly appointed Trustee in Bankruptcy of said The Globe Navigation Company, a bankrupt, is hereby substituted as respondent in lieu of the said The Globe Navigation Company;

And thereupon said cause coming on for final hearing upon the pleadings and proof and having been argued by the Proctors for the respective parties, and due deliberation being had thereon and the Court being of the opinion that the respondent is entitled to a decree as prayed for;

IT IS ORDERED, ADJUDGED AND DECREED by the Court that the libel herein of the Firemen's Fund Insurance Company against this respondent be and hereby is dismissed and that the respondent recover its costs in this behalf incurred, taxed and allowed, in the sum of Twenty-nine and 50/100 Dollars (\$29.50), for all of which let execution issue.

ORDERED and DECREED in open court this 21st day of April, 1915.

Libelant excepts to the signing and entry of the foregoing Decree. Exception allowed.

JEREMIAH NETERER,

Judge.

[Indorsed]: Decree. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 21, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [68]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN ADMIRALTY—No. 2512.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Libelant,

vs.

GLOBE NAVIGATION COMPANY, a Corpora-
tion,

Respondent.

S. M. WESTON (Trustee in Bankruptcy of Globe
Navigation Company, a Bankrupt),

Substituted Respondent.

Notice of Appeal.

To Clise & Poe, Proctors for the Respondent and
Substituted Respondent Above-named; and
To Frank L. Crosby, Clerk of the Above-en-
titled Court:

You, and each of you, will please take notice that
the libelant above named hereby appeals from the
final decree made and entered herein on the 21st day
of April, 1915, to the United States Circuit Court of
Appeals for the Ninth Circuit.

Dated Seattle, Washington, April 29, 1915.

McCUTCHEN, OLNEY & WILLARD

IRA A. CAMPBELL,

BALLINGER, BATTLE, HULBERT &
SHORTS.

Proctors for Libelant and Appellant.

74 *Fireman's Fund Insurance Company vs.*

Copy of within Notice received and due service thereof acknowledged this 30th day of April, 1915.

H. R. CLISE,
Attorney for Libelant. [69]

[Indorsed]: Notice of Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 30, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [70]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

IN ADMIRALTY—No. 2512

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Libelant,

vs.

GLOBE NAVIGATION COMPANY, a Corporation,
tion,

Respondent.

S. M. WESTON (Trustee in Bankruptcy of Globe
Navigation Company, a Bankrupt),
Substituted Respondent.

Cost Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, Fireman's Fund Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of California, as principal, and Hartford Accident & Indemnity Company, a corporation duly organized under the laws of the

State of Connecticut and authorized to transact business as surety within the Western District of the State of Washington, as surety, are held and firmly bound unto The Globe Navigation Company, a corporation, a bankrupt, and to S. M. Weston, trustee in bankruptcy of said The Globe Navigation, a bankrupt, the respondent and substituted respondent above named, in the sum of Two Hundred Fifty (\$250.00) Dollars, to be paid unto said respondent and substituted respondent, for the payment of which well and truly to be made we bind ourselves and each of us, our, and each of our successors and assigns jointly and severally firmly by these presents.

SEALED WITH OUR SEALS AND DATED
THIS 29th day of April, 1915.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that whereas the libelant above named, as appellant, has prosecuted an appeal to the United States Court of Appeals for the Ninth Circuit from a decree of the above entitled court, signed and entered herein on the 21st day of April, 1915;

NOW, THEREFORE, if the above named libelant, Fireman's Fund Insurance Company, a corporation, appellant, shall prosecute its said appeal to effect and pay the costs, if the appeal is not sustained, then this obligation shall be void; otherwise the same

76 *Fireman's Fund Insurance Company vs.*

shall be and remain in full force and effect.

FIREMAN'S FUND INSURANCE COM-
PANY,

By FRANK G. TAYLOR,

Gen'l Agt.

HARTFORD ACCIDENT & INDEMNITY
COMPANY,

By B. C. SHORTS,

Attorney in Fact.

[Seal] Attest: R. C. ATKINSON,

Attorney in Fact. [71]

Copy of within Bond received and due service
thereof acknowledged this 30th day of April, 1915.

H. R. CLISE,

Attorney for Libelant.

[Indorsed]: Cost Bond on Appeal. Filed in the
U. S. District Court, Western Dist. of Washington,
Northern Division. Apr. 30, 1915. Frank L. Crosby,
Clerk. By Ed M. Lakin, Deputy. [72]

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

IN ADMIRALTY—No. 2512

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Libelant,

vs.

GLOBE NAVIGATION COMPANY, a Corpora-
tion,

Respondent.

S. M. WESTON (Trustee in Bankruptcy of Globe
Navigation Company, a Bankrupt),
Substituted Respondent.

Notice of Filing Cost Bond on Appeal.

To Clise & Poe, Proctors for Respondent and
Substituted Respondent above named:

Please take notice that the libelant above named,
appellant, has this day filed in the office of the clerk
of the District Court of the United States for the
Western District of Washington, Northern Division,
its cost bond on appeal, which said bond is executed
by said respondent, as principal, and by Hartford
Accident & Indemnity Company, a corporation, as
surety, and that the address, residence and principal
place of business of R. C. Atkinson, who attested as
attorney in fact for said surety the said bond, is
Office No. 607 Hoge Building, Seattle, Washington,
and that the address, residence and place of business
of B. C. Shorts, who executed said bond as attorney
in fact for said surety is Office No. 901 Alaska Build-
ing, Seattle, Washington.

Dated Seattle, Washington, Apr. 30, 1915. [73]

McCUTCHEN, OLNEY & WILLARD,

IRA A. CAMPBELL,

BALLINGER, BATTLE, HULBERT &
SHORTS,

Proctors for Appellant, the Respondent Above
Named.

Copy of within Notice received and due service
thereof acknowledged this 30th day of April, 1915.

H. R. CLISE,
Attorney for Libelant.

[Indorsed]: Notice of Filing Cost Bond on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 30, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [74]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 2512

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Libelant,

vs.

GLOBE NAVIGATION COMPANY, a Corporation,
tion,

Respondent,

S. P. WESTON (Trustee in Bankruptcy of Globe
Navigation Company, a Bankrupt),

Substituted Respondent.

**[Stipulation and Order Directing Transmission of
Original Exhibits, etc., to Appellate Court.]**

IT IS HEREBY STIPULATED AND
AGREED by and between the parties hereto that all
exhibits introduced in the above entitled cause, and
in the depositions taken in said cause, be sent to the
United States Circuit Court of Appeals for the Ninth

Circuit as original exhibits with the apostles on appeal.

McCUTCHEN, OLNEY & WILLARD,
IRA A. CAMPBELL,
BALLINGER, BATTLE, HULBERT &
SHORTS,

Proctors for Libelant.

CLISE & POE,

Proctors for Respondent.

IT IS SO ORDERED.

JEREMIAH NETERER,
District Judge. [75]

[Indorsed]: Stipulation for Use on Appeal of Original Exhibits. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, May 25, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [76]

*In the District Court of the United States, for the
Western District of Washington, Northern Division.*

No. 2512.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Libelant,

vs.

GLOBE NAVIGATION COMPANY, a Corporation.
tion.

Respondent,

S. P. WESTON (Trustee in Bankruptcy of Globe
Navigation Company, a Bankrupt),
Substituted Respondent.

Assignment of Errors.

Comes now the FIREMAN'S FUND INSURANCE COMPANY, libelant and appellant herein, and says that in the record, opinion, decision and final decree in said cause there is manifest and material error, and said appellant now makes, files and presents the following assignment of errors on which it relies, to wit:

I.

That the District Court erred in entering the decree herein of date the 21st day of April, 1915, dismissing the libel herein.

II.

That the District Court erred in entering the entering the decree herein of date the 21st day of April, 1915, adjudging that respondent (appellee) recover its costs [77] in the sum of twenty-nine and 50/100 (29.50) dollars.

III.

That the District Court erred in not holding and deciding that libelant (appellant) was entitled on the libel and under the evidence adduced to a decree in the sum of eight thousand thirty-two and 20/100 (8,032.20) dollars, with interest and costs as prayed for in the libel herein.

IV.

That the District Court erred in not holding and deciding that libelant (appellant) was entitled on the evidence adduced and under the prayer for gen-

eral relief made in said libel to a decree in the sum of eight thousand thirty-two and 20/100 (8,032.20) dollars, with interest and costs.

V.

That the District Court erred in not holding and deciding that libelant (appellant) was entitled on the substantive facts alleged and under the general relief prayed for in the libel and on the evidence adduced to a decree in the sum of eight thousand thirty-two and 20/100 (8,032.20) dollars.

VI.

That the District Court erred in holding and deciding that there was a variance between the allegations of the libel and the proof adduced, and for that reason denying unto libelant (appellant) the relief prayed for in said libel.

VII.

That the District Court erred in holding and [78] deciding that the authority of the master to pledge the vessel was limited to necessities.

VIII.

That the District Court erred in deciding that the execution of the draft issued was not made for necessities.

IX.

That the District Court erred in holding and deciding that libelant (appellant) must be held to the basis of respondent's (appellee's) knowledge of the draft.

X.

That the District Court erred in holding and deciding that the right to recovery for advanced freight

enured to libelant (appellant) under the charter-party stipulations and law applicable thereto, and not upon the draft executed by the master.

XI.

That the District Court erred in holding and deciding that the action is grounded upon the draft and not upon the advanced freight paid, and in not entering a decree in libelant's (appellant's) favor under the prayer for general relief in the libel on the evidence adduced.

XII.

That the District Court erred in holding and deciding that the draft was issued without authority.

XIII.

That the District Court erred in holding and deciding that the draft could not support an action for recovery. [79]

In order that the foregoing assignment of errors may be and appear of record said appellant files and presents the same, and prays that such disposition be made thereof as is in accordance with the law and the statutes of the United States in such cases made and provided, and said appellant prays a reversal of the decree herein heretofore made and entered in the above cause and appealed from, and that it may have such other and further relief as shall be deemed meet and equitable.

Dated: May 26th, 1915.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

BALLINGER, BATTLE, HULBERT &
SHORTS,

Proctors for Libelant and Appellant.

Receipt of a copy of the within assignment of errors is hereby admitted this 28th day of May, 1915.

CLISE & POE,
Proctors for Respondent.
S.

[Indorsed]: Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. May 29, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [80]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 2512.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Libelant,

vs.

GLOBE NAVIGATION COMPANY, a Corpora-
tion,

Respondent,

S. P. WESTON (Trustee in Bankruptcy of Globe
Navigation Company, a Bankrupt),
Substituted Respondent.

Praeceptum for Apostles on Appeal.

To the Clerk of the Above-entitled Court:

You will please prepare the apostles in this cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit upon the appeal heretofore perfected in said

court, and include in said apostles the following pleadings, proceedings and papers on file, to wit:

1. All those papers required by section 1 of paragraph I of rule 4 of the rules of Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit. [81]

2. All the pleadings in the said cause, including the libel, and amended libel, and the answers to the same, with any and all exhibits annexed to said pleadings.

3. All the testimony and other proofs adduced in the cause, including the testimony taken at the trial; all depositions taken by either party and admitted in evidence; all exhibits introduced by either party, said exhibits and all of them to be sent up to said Circuit Court of Appeals as original exhibits.

4. The opinion and decision of the Court.

5. The final decree, notice of appeal, cost bond on appeal, and notice of filing of bond.

6. The assignment of errors.

We hereby waive our right to have the record in this case printed by the clerk of the above-entitled court, and hereby elect to have said record printed by the clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

McCUTCHEN, OLNEY & WILLARD,
IRA A. CAMPBELL,
BALLINGER, BATTLE, HULBERT &
SHORTS,

Proctors for Libellant.

[Indorsed]: Praecipe for Apostles on Appeal.
Filed in the U. S. District Court, Western Dist. of

Washington, Northern Division. May 25, 1915.
Frank L. Crosby, Clerk. By E. M. L., Deputy. [82]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 2512.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Libelant,

vs.

GLOBE NAVIGATION COMPANY, a Corpora-
tion,

Respondent,

S. P. WESTON (Trustee in Bankruptcy of Globe
Navigation Company, a Bankrupt),
Substituted Respondent.

**Certificate of Clerk U. S. District Court to Apostles,
etc.**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify the foregoing 82 pages, numbered from 1 to 82, inclusive, to be a full, true, and correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing-entitled cause, as are necessary to the hearing of said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and as is

called for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitutes the record on appeal to the said Circuit Court of Appeals for the Ninth Circuit from the District Court of the United States for the Western District of Washington. [83]

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the Libelant and Appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fee (Sec. 828 R. S. U. S.) for making record, certificate or return, 177 folios at 15c.	\$26.55
Certificate of Clerk to transcript of record, 4 folios at 15c.60
Seal to said Certificate.20
Certificate of Clerk to Original Ex- hibits, 3 folios at 15c.45
Seal to said Certificate.20
<hr/>	
Total,	\$28.00

I hereby certify that the above cost for preparing and certifying record amounting to \$28.00 has been paid to me by Messrs. McCutchen, Olney & Willard, Ira A. Campbell, Esq., and Messrs. Ballinger, Battle, Hulbert & Shorts, Proctors for Libelant.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at

Seattle, in said District, this 27th day of July, 1915.

[Seal]

FRANK L. CROSBY,
Clerk U. S. District Court. [84]

[Indorsed]: No. 2630. United States Circuit Court of Appeals for the Ninth Circuit. Fireman's Fund Insurance Company, a Corporation, Appellant, vs. Globe Navigation Company, a Corporation, and S. P. Weston, as Trustee in Bankruptcy of the Globe Navigation Company, a Corporation, Bankrupt, Appellees. Apostles on Appeal. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed July 30, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 2512.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Libelant,

vs.

GLOBE NAVIGATION COMPANY, a Corpora-
tion,

Respondent,

S. P. WESTON (Trustee in Bankruptcy of Globe
Navigation Company, a Bankrupt),

Substituted Respondent.

**Order Enlarging Time [to July 1, 1915] to Transmit
Apostles on Appeal.**

Now, on this 27th day of May, 1915, upon motion of Proctors for libelant, and for sufficient cause appearing, it is ordered that the time within which the Clerk of this Court may prepare, certify and transmit to the United States Circuit Court of Appeals the transcript of the record in this cause be, and the same is hereby, extended to and including the 1st day of July, 1915.

JEREMIAH NETERER,
District Judge.

[Indorsed]: No. 2512. In the District Court of the United States for the Western District of Washington. Fireman's Fund Ins. Co., a Cor., Libelant, vs. Globe Navigation Co., a Cor., Respondent. S. P.

Weston, etc., Substituted Respondent. Order Enlarging Time to Transmit Apostles on Appeal to Circuit Court of Appeals. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. May 27, 1915. Frank L. Crosby, Clerk. by Ed. M. Lakin, Deputy.

No. 2630. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to July 1, 1915, to File Record Thereof and to Docket Case. Filed Jul. 30, 1915. F. D. Monckton, Clerk.

*In the District Court for the United States for the
Western District of Washington, Northern
Division.*

No. 2512.

FIREMAN'S FUND INSURANCE COMPANY,
Libelant,

vs.

GLOBE NAVIGATION COMPANY, a Corpora-
tion,

Respondent,

S. P. WESTON (Trustee in Bankruptcy of Globe
Navigation Company, a Bankrupt),
Substituted Respondent.

**Order Enlarging Time [to August 1, 1915] to
Transmit Apostles on Appeal to Circuit Court
of Appeals.**

Now, on this 26th day of June, 1915, upon motion of proctors for libelant, and for sufficient cause appearing, it is ordered that the time within which the

Clerk of this court may prepare, certify and transmit to the United States Circuit Court of Appeals the transcript of the record in this cause be, and the same is hereby, extended to and including the 1st day of August, 1915.

JEREMIAH NETERER,
District Judge.

[Endorsed]: No. 2512. In the District Court of the United States for the Western District of Washington. Fireman's Fund Insurance Company, Libellant, vs. Globe Navigation Co., a Cor., Respondent. S. P. Weston, etc., Substituted Respondent. Order Enlarging Time.

No. 2630. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Aug. 1, 1915, to File Record Thereof and to Docket Case. Filed Jul. 30, 1915. F. D. Monckton, Clerk.